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Montague (Ralph) Duke of Montague

Earle of Montague and others Appellants.
Earle of Bathe and others Respondents.

THIS Cause having been heard and debated *de Die in Diem*, from the first to the 17th of Feb. 1693. It was then Resolved, and entered in the Book of this Honourable House, as follows, *viz.* *Die Sabbathi 17 die Feb. 1693.*

After long Debate, this Question was put.

Whether the Dismissal of the Court of Chancery shall be Reversed?

It was Resolved in the N E G A T I V E.

Ordered, *That the Petition of Appeal shall be Dismissed, and the Dismissal of the Court of Chancery shall be Affirmed,* *And that what the House hath done in this Case, shall be without Prejudice to any Claim or Interest of Mr. Pride.*

Upon which Dismissal the Respondents were absolutely discharged from the said Appeal, as all other Respondents have always been after a Dismissal.

But on the 20th of Feb. the Appellants, by their Petition, set forth, That they had in their Appeal, wholly depended upon Matter of Equity: And therefore, in regard their Lordships did not think fit to Relieve them on the Matters of Equity, they prayed their Lordships, that in such Order as should pass touching the said Matters, such Directions might be given, as not to prejudice or prelude any Tryal of the Validity of the Deeds, under which the Respondents make Title. And that whensoever such Tryal, or Tryals should be brought, the Respondents might be ordered to produce all such Writings, and Exhibits, as have been by them proved and Exhibited in the Court of Chancery, or before their Lordships; and that they may not thereat give in Evidence, any Lease or Incumbrance, whereby to obstruct the Tryal of the Validity of the said Deeds.

Whereupon, It was then Ordered, That the Clerks do search the Books for Presidents. If at any time, after a Cause Dismissed in this House; This House hath ordered the Exhibits made use of here, to be made use of at a Tryal at Law, without directing that Tryal. That the Clerks report what they find, to the House in this Case, on Friday next at Eleven of the Clock, and all the Lords, Summoned then to Attend.

Which Petition as the Respondents are Avised is in its Nature an **ORIGINAL CAUSE**, it importing no manner of Complaint, or Appeal from any Judgment of any Inferior Court; and the Appeal which stands Dismissed, was not to have a new Tryal, it not having been demanded, or denied in Chancery.

But the Appeal was only against the Judgment of the Court of Chancery, for dismissing the Appellant's Bill in Equity.

That before the Appeal, there was a Verdict for the Respondent's Title, by a special Jury of Substantial and Indifferent Jurors, at a Tryal at the King's-Bench-Bar, of about twelve Hours, against which the Appellants never Complained, but at the Barr of this House admitted the Law to be against them.

That what is desired by the Appellants by this their New Petition, is in effect to Impeach the Verdict, and undermine the Judgment, not only of the Court of Chancery, but of this honourable House, and should such Order be granted, as desired, it would retain the Cause after Dismissed, which would be a Contradiction in *Terminus*, and a Dishonour to the Wisdom and Justice of this House, and would disparage the Respondent's Title, by giving it a mark of the Disfatisfaction of this House.

The Dismissal of the Bill, and Appeal puts the Parties out of Court, and as at Law a Plaintiff Non-Suite can pray nothing; so neither Regularly can a Plaintiff in Equity after a Dismissal.

But if the Appellants think fit to have any other Tryals, they may without the Countenance of this House, Try as often as they please, the Law being open.

Interest Reipublicæ ut sit finis Litium.

